

R.W. THORPE & ASSOCIATES, INC.

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July 13, 2009

Tukwila City Council
City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188

EXHIBIT 21 DATE 7-13-09
PROJECT NAME
PC Recommended SMP
FILE NO LO6-088

RE: City of Tukwila Proposed Shoreline Master Program Update

Dear City Council Member:

We represent the Trustees of Desimone Trust who are owners of several industrial zoned properties and one commercial zoned property along the Duwamish/Green River that will be impacted by the proposed Shoreline Master Program Update. The Desimone Trust has requested that R.W. Thorpe & Associate's Inc. (RWTA) review the proposed City of Tukwila SMP and the recently approved City of Auburn SMP to determine if there are any regulations within Auburn's SMP that could be incorporated into Tukwila's SMP that would alleviate the anticipated impacts to the properties owned by the Desimone Trust. In reviewing the two SMP's, the areas that we focused our review include the following:

- Shoreline Buffers (Width & Averaging)
- Height Restrictions
- Nonconforming Structures and Uses
- Revegetation
- Public Access

The purpose of this letter is to provide two case studies (Airpro and Barnaby) on how the proposed Tukwila regulations will impact the potential for redevelopment of the two properties. The two properties were chosen because of the degree of impacts these proposed regulations will have on the potential for redevelopment. After determining the impacts, RWTA has provided recommended changes to the SMP which detail how the City of Tukwila can reduce the identified impacts. These recommendations are based on review of the Auburn SMP which has recently been adopted by the Washington State Department of Ecology (DOE).

This letter will discuss each property individually in the following manner:

1. First we will identify a Highest & Best Use scenario using existing conditions;
2. We will perform the same analysis using the proposed Tukwila SMP regulations; and
3. We will use our recommended revisions to illustrate the potential increase in development that can be obtained using regulations already approved by DOE and adopted Auburn.

With each scenario we have provided a conceptual site plan which depicts one option of how the property could be developed with what we see as the highest and best use.

I. AIRPRO SITE (10625 EAST MARGINAL WAY S.)

A. EXISTING CONDITIONS (EXHIBIT#1)

The Airpro site is currently regulated by the King County Shoreline Master Program, King County Code (KCC) Title 25, but administered by the City of Tukwila. Following the adoption of the King County SMP in 1978 the Airpro property was annexed by the City of Tukwila. Because the city did not perform its own inventory and analysis of the shoreline, the city continued to use the King County Regulations. Based on the City of Tukwila Shoreline Master Plan Jurisdiction & Zoning Map the Airpro property shoreline is designated as 'Urban'.

1. Shoreline Buffers

The current King County SMP requires that all industrial development be constructed 50 feet from the Ordinary High Water Mark (OHWM). If the industrial development provides "public access" then the required buffer may be reduced to 10 feet from the OHWM [KCC 25.16.170(H)]. Public access means actual unobstructed access available to the general public from land to the ordinary high water mark or to the wetland directly abutting the ordinary high water mark.

The conceptual development on Exhibit #1 utilizes the public access benefit and therefore shows a 10 foot buffer from the OHWM.

2. Height Restriction

The property is currently zoned Manufacturing Industrial Center/Heavy (MIC/H). The height limit within this zone is 125 feet (TMC 18.38.080). **Because the property is completely encompassed by the 'Urban' shoreline designation the height restriction for the entire property is 35 feet.**

3. Nonconforming Use & Structure

The existing use of warehouse is a permitted use and therefore the existing nonconforming regulations do not apply. However, based on aerial photos it appears that the existing structure encroaches into the required buffer and therefore became nonconforming with the adoption of the current SMP. Any improvements to the nonconforming structure are governed by KCC 25.32.060. These regulations state that applications for substantial development or building permits to modify a nonconforming structure may be approved only if:

1. The modifications will make the use or development less nonconforming; or
2. The modifications will not make the use or development more nonconforming.

Also, any structure not conforming to existing regulations, which is destroyed, deteriorated, or damaged more than fifty percent of its fair market value at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed only insofar as it is consistent with existing regulations.

In addition to the King County SMP regulations, the existing structure is also subject to the City of Tukwila zoning code (TMC 18.70.050). These regulations are stricter and require that any nonconforming structure vacant or abandoned for 24 consecutive months shall thereafter be required to be in conformance with the regulations. At the request of the owner the city council may extend the 24 months to an unspecified amount of time. **Under the existing scenario, if the property becomes vacant for more than 24 months and the City Council does not extend the timeframe, the property owner would lose the value of the building which currently is \$158,200.**

If there were redevelopment of the property under current regulations, it is assumed that any new redevelopment would not be conforming. One option of redevelopment, under current regulations, is shown on Exhibit 1.

A further impact to property owners, as a result of a structure or a use becoming nonconforming, is the inability to obtain financing for needed improvements which would result in loss of value, marketability, and redevelopment potential. A property that remains vacant due to government regulations becomes unattractive to potential tenants as well as banks that would under normal conditions provide funds to make the needed improvements. **The inability to attract new tenants and obtain financing creates a significant economic loss to the property owners and a loss of revenue to the city.**

4. Revegetation and Landscape Requirements

No regulations or requirements were found that require a property owner to re-vegetate the shoreline upon redevelopment of the property.

5. Public Access

There are no requirements in the existing SMP that requires every property owner to provide public access. Access is only required where, historically there was public access and if the site is part of a proposed King County Trail. This site does not qualify for either. There is no evidence of past public access and there is no proposed trail on the King County Regional Trails Map. As discussed previously, by providing public access, the property owner may construct structures 10 feet away from the OHWM.

6. Development Scenario

Exhibit one illustrates one potential development scenario using the existing SMP Regulations. By providing the direct public access to the OHWM, the buffer is reduced to 10 feet which then provided additional development area.

B. PROPOSED CITY OF TUKWILA SMP (EXHIBIT#2)

The following describes how the proposed SMP regulations differ from the existing regulations and how redevelopment of the property is impacted by the new regulations. The proposed SMP designates the shoreline of the property as Urban Conservancy Shoreline Environment (Map 3: Proposed Shoreline Environments)

1. Shoreline Buffers

The proposed River Buffer is 100 feet for the Urban Conservancy Shoreline Environment. The 100 foot buffer may be reduced by re-sloping the bank to a 2.5:1 slope and then adding a 20 setback to the top of the slope. This also requires the property owner to vegetate the new slope and river bank. **The re-sloping option does not appear to be cost beneficial to small properties like the Airpro site which have a substantial amount of water frontage and limited development area.** Without utilizing the re-sloping option, the proposed buffer eliminates the development potential for approximately 31,690 square feet of property. Exhibit 2 identifies the amount of undevelopable area due to the increase in buffer widths and also shows the limited amount of area remaining for development. **If the entire property is rendered undevelopable because of these proposed regulations, the property owners potentially could lose the value of the land and the structure which are currently assessed at \$748,600.00.** On October 6, 2008, this office performed a similar analysis on eight properties owned by the Desimone Trust. This analysis is currently part of the City of Tukwila record as Exhibit #25 (Peterson Letter) of the October 9, 2008 Planning Commission Hearing. An economic impact summary is attached to this letter for review. In summary the proposed SMP regulations would have an economic impact of approximately all \$4.4 million dollars. This is the assessed value of the portions of these properties that would be encumbered by the proposed buffers.

The proposed regulations eliminate the option to reduce the buffer by providing public access which is currently available under the King County SMP. **This is an option the City Council should reconsider for properties that are impacted such as the Airpro site.**

2. Height Restriction

The proposed regulations provide for two different heights within the 200 foot shoreline jurisdiction. Within the 100 foot River Buffer the proposed height is 15 feet. Between the River Buffer and the 200 foot shoreline boundary the height limit is 45 feet. The increase from 35 feet to 45 feet does not benefit this property because a majority of the property is within the 100 foot River Buffer which does not allow industrial development. This property is further impacted by reducing the height from the existing 35 feet to the proposed 15 feet. **Along with the buffer increase, the reduction in allowed height potentially eliminates the redevelopment of the property for any significant commercial value.**

3. Nonconforming Use & Structure

As stated before the existing structure is nonconforming because it is within the current shoreline buffer and would continue to be nonconforming under the proposed SMP. With the adoption of the proposed regulations, the existing use also becomes non nonconforming because it is located within the River Buffer. The proposed SMP regulations consider the existing use and structure as a 'Pre-existing Use' and a 'Pre-existing structure'. Section 14.6 of the proposed regulations regulates pre-existing structures and uses

Pre-existing Use (14.6.A)

The existing warehouse use is nonconforming because it is located within the River Buffer. No pre-existing use can be enlarged, intensified, increased or extended to occupy a greater use of

the land, structure or combination of the two, than is presently occupied. The pre-existing use cannot be moved or extended in whole or in part to any other portion of the lot or parcel occupied by the use. If the pre-existing use ceases for any reason for a period of more than 24 consecutive months, no new use can go into the building because it is located within the River Buffer. Upon request of the owner, prior to the end of the 24 consecutive months and upon reasonable cause shown, the City Council may grant an extension of unspecified time beyond the 24 consecutive months. **If the property owner does not find a new tenant after 24 months of vacancy and the City Council does not extend the 24 month period, the property would lose its pre-existing structure and pre-existing use status in which case no new uses could occupy the property. This would result in an economic loss of the property of approximately \$748,600 which is the current assessed value of the land and structures.**

To alleviate the economic hardship of not allowing new uses that are more intense than the pre-existing use, we recommend that any use allowed by the underlying zone, that would not create more of an impact to the shoreline, be allowed to occupy a nonconforming structure.

Pre-existing Structure (14.6.B)

The existing structure under the proposed regulations may be not enlarged or altered in such a way that increases its degree of nonconformity or increases its impacts to the functions and values of the shoreline environment. Ordinary maintenance and repair of and upgrades to a pre-existing structure are permitted. If the existing structure is destroyed by any accidental means the structure may be reconstructed to its original dimensions and location on the lot. In the event that the property is redeveloped, such redevelopment must be in conformity with the provisions of this SMP. The existing structure cannot be relocated on the existing site. Similar to the pre-existing use regulations, if the pre-existing structure, or structure and premises in combination, is vacated or abandoned for 24 consecutive months, the structure, or structure and premises in combination, shall thereafter be required to be in conformance with the regulations of the SMP. Upon request of the owner, prior to the end of the 24 consecutive months, and upon reasonable cause shown, the City Council may grant an extension of time beyond the 24 consecutive months. The City Council shall consider special circumstances and economic impacting the sale or lease of said structure. **If the property owner does not find a new tenant after 24 months of vacancy and the City Council does not extend the 24 month period, the property would lose its pre-existing structure and pre-existing use status in which case no new uses could occupy the property. This would result in an economic loss of the property of approximately \$748,600 which is the current assessed value of the land and structures.**

Because many properties along the shorelines contain several structures which become nonconforming following the adoption of the proposed regulations, we also request that the City Council consider the option of allowing a property owner to consolidate nonconforming structures into one structure in the event that the buildings are destroyed by accidental means; with the provision that the rebuilt structure be located approximately in the same location as the furthest building from the OHWM that was destroyed. Allowing the consolidation of nonconforming structures, may reduce the cost of reconstruction as well as

having the potential to eliminate impervious surfaces, such as sidewalks and/or covered walkways that connected the two structures.

4. Revegetation and Landscape Requirements (9.10 Vegetation Protection and Landscaping)

As part of the proposed regulations, the City of Tukwila has introduced a new set of regulations **requiring** the preservation of existing trees, removal of invasive species and replanting of native vegetation. A property owner would be required to comply with these regulations if development or redevelopment takes place on the property. It has been determined by previous analysis, described above, that the property has limited potential for development or redevelopment and therefore, would not be subject to these requirements. However; **the City of Tukwila has not provided sufficient amount of information through studies or analysis that would conclude that redevelopment of ALL properties would have an impact beyond existing conditions. The city has not justified the need for the proposed regulations, nor has it considered the proportion of redevelopment and the amount of mitigation for that development.**

5. Public Access (11.0 Public Access to the Shoreline)

The City of Tukwila has identified four principles where Public Access is **required** to be provided:

1. Where a development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact.
2. Where a development or use will interfere with an existing public access way, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses.
3. Where a use or development will interfere with a public use of lands or waters subject to the public trust doctrine, the development shall provide public access to mitigate this impact.
4. Where the development is proposed by a public entity or on public lands.
5. Where identified on the Shoreline Public Access Map.

This appears to be in direct conflict with the Shoreline Management Provisions of WAC 173-26-221(4)(c) that states that **"Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development."** This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights." Requiring all property owners to provide public access exceeds the intent of the Shoreline Management Act.

6. Development Scenario (Exhibit #2)

Exhibit #2 illustrates the extent of the proposed 100 foot buffer. The proposed regulations eliminate the potential for the property to redevelop for any reasonable economic use causing the loss of economic value of the property which is assessed at \$748,600.

C. RECOMMENDED REVISIONS

1. Shoreline Buffers

As stated in the previous analysis, the proposed buffer widths would cover a majority of the property and cause the existing structure and use to be nonconforming. The impacts to these proposed regulations have the potential for eliminating and potential for redevelopment and the economic loss of the entire property. To mitigate for these potential impacts, the following are recommended changes to the regulations found in 7.5 Determination of Shoreline Buffers. Each section of the regulations which discusses the buffers for each environment should include the proposed revisions.

1. **The City of Tukwila should provide for a process where a property owner can request that the proposed buffer be reduced by enhancing the remaining buffer and improving the functions and values of the River Buffer.** The City of Auburn has recently received approval of their SMP in which they allow for a buffer reduction in the amount of 35 percent. The reduction is based upon the approval of certain criteria, but the Department of Ecology has reviewed and approved such a reduction process. By allowing a buffer reduction process the City of Tukwila can provide property owners an incentive to redevelop and enhance the shoreline buffer; which is one of the goals of the SMP.
2. **Consistent with the existing King County SMP, the City of Tukwila should not eliminate the provisions that allow for the reduction of the River Buffer if public access is provided.** Public access, whether it is direct or limited, is not a requirement for all property owners. For those property owners who provide public access, beyond a defined City of Tukwila Public Access Plan, a reduction in buffer should be granted. The amount of buffer reduction should be dependant on the amount of public access being granted.

2. Height Restriction

The proposed height restrictions are consistent with the existing SMP and are consistent with those jurisdictions that have adopted new SMP's. No recommendations are being made for height restrictions. However, because the River Buffer width determines the allowable building height, this property is still prohibited from redeveloping to the allowable height. Further review of the buffer width regulations and possible revisions mentioned above, would allow this property to redevelop consistent with revised regulations without economic loss to the property owner.

3. Nonconforming Use & Structure

Sections 14.6(A)(3) & 14.6(B)(4) should be revised to reflect the following:

It is recommended that the vacancy or abandonment period for pre-existing development be extended to 48 months with the option of City Council extended that timeframe for an additional 12 months, cumulatively giving a property owner the potential of 5 years to fill a tenant and/or structure vacancy.

The reasons for this recommendation are many: the proposed regulations are too restrictive, unreasonable, and do not reflect the current economic client. The City of Tukwila currently has properties that have been vacant for at least two years and some that have been vacant longer. This vacancy in commercial property is probably hurting the city's commercial tax base. These regulations will only make the situation worse. These properties would not be financially attractive to potential buyers or tenants knowing that the use or structure is nonconforming.

4. *Revegetation and Landscape Requirements (9.10 Vegetation Protection and Landscaping)*

It is recommended that the City of Tukwila revisit this section and provide the connection of requiring a substantial amount of vegetation for any scope or size of redevelopment. **The amount of vegetation and landscaping should be proportional to the amount of development occurring on the property.**

5. *Public Access (11.0 Public Access to the Shoreline)*

The City of Tukwila should complete a Comprehensive Public Access study to determine the need for public access and identify those areas that are deficient in providing public access as intended by the Shoreline Management Act. Map 6 of the proposed SMP identifies trails; however it lacks identified areas for public access. Once public access points are identified in the plan; those properties identified should be required to provide public access. **The City of Tukwila should maintain the current provisions of the King County SMP that provides a buffer reduction for those properties providing direct and limited public access. This should be included in Section 11.5 Public Access Incentives.**

As part of the study to determine public access, the City of Tukwila should take into consideration the historical points of access to the water, and the intensity of future development. A requirement for public access should be in proportion to the impact created by new development.

6. *Development Scenario (Exhibit #3)*

Utilizing the proposed revisions discussed before, Exhibit #3 illustrates one conceptual site plan for development that occur on this property. A buffer reduction of 35 feet would allow the property owner to continue to use have an economic return on the property while providing better environmental protection that is currently there.

II. BARNABY SITE (16401 WEST VALLEY HIGHWAY)

A. EXISTING CONDITIONS (EXHIBIT#4)

The Barnaby site is currently regulated by the City of Tukwila Shoreline Master Program. Based on the City of Tukwila Shoreline Master Plan Jurisdiction & Zoning Map the Barnaby property shoreline is designated as 'Urban'.

1. *Shoreline Buffers*

The current Tukwila SMP requires that all development allowed by the underlying zone be constructed 100 feet from the mean high water mark (MHW). This first 50 feet from the MHW is referred to as the River Zone, which is limited to certain recreational facilities and

directional signage. The adjacent landward 50 feet is referred to as the Low Impact Zone. The Low Impact Zone is 100 feet from the MHW. This zone is restricted to the same uses as the River Zone; however, the height is increased and parking lots are allowed. The High Impact Zone which is adjacent to the Low Impact Zone allows all uses that are identified in the underlying zone.

2. Height Restriction

The property is currently zoned Tukwila Urban Center. The height limit within this zone is 115 feet (TMC 18.28.080). **Because the property is regulated by the existing SMP, the first 50 feet of the property has a height restriction of 15 feet, the next 50 feet has a height restriction of 35 feet and the remaining portion of the property has a height restriction of 115' as allowed by the current zoning code.**

3. Nonconforming Use & Structure

The existing use of a restaurant is a permitted use in the underlying zone but is not permitted within the Low Impact Zone; **therefore, the existing use is nonconforming and the regulations of Chapter 8 of the current SMP regulate the nonconforming use. The current SMP does not distinguish between a nonconforming structure and a nonconforming use, therefore the following regulation applies to the entire site since the use is nonconforming.** Chapter 8 states that any nonconforming use may not be extended or enlarged or structurally altered in a manner which would add to the original extent of non-conformance with the Shoreline Master Program, except by special permit from the Planning Commission in case of evident hardship. Such extension granted by the Planning Commission shall not exceed twenty-five percent of the ground area of the original building or structure, provided, however, that nothing in this section shall prevent, within a period of six months from the date of destruction, the securing of a building permit for the restoration of a non-conforming building or structure not more than seventy-five percent destroyed by fire, explosion, act of God or act of the public enemy. The determination of whether a building or structure is seventy-five percent destroyed shall rest with the Building Official.

Similar to the request for the Airpro site, we request that the City Council consider the option of allowing a property owner to consolidate nonconforming structures into one structure in the event that the buildings are destroyed by accidental means. Also, to alleviate the economic hardship of not allowing new uses that are more intense than the pre-existing use, we recommend that any use allowed by the underlying zone, that would not create more of an impact to the shoreline, be allowed to occupy a nonconforming structure.

4. Revegetation and Landscape Requirements

No regulations or requirements were found in the existing Tukwila SMP that would require a property owner to re-vegetate the shoreline upon redevelopment of the property.

5. Public Access

There are no requirements in the existing SMP that requires every property owner to provide public access. Access is discussed and promoted on public lands. Public access on private

lands is discussed as goals of the Shoreline Management Act and the SMP; but must take into consideration the respect of property rights.

6. Development Scenario

Exhibit #4 illustrates one potential development scenario using the existing SMP Regulations.

B. PROPOSED CITY OF TUKWILA SMP (EXHIBIT#5)

The following describes how the proposed SMP regulations differ from the existing regulations and how redevelopment of the property is impacted by the new regulations. The proposed SMP designates the shoreline of the property as Urban Conservancy Shoreline Environment (Map 3: Proposed Shoreline Environments)

1. Shoreline Buffers

The proposed River Buffer is 100 feet for the Urban Conservancy Shoreline Environment. The 100 foot buffer may be reduced by re-sloping the bank to a 2.5:1 slope and then adding a 20 setback to the top of the slope. This also requires the property owner to vegetate the new slope and river bank. **The proposed 100 foot buffer is consistent with the existing Tukwila SMP.**

2. Height Restriction

The proposed regulations provide for two different heights, instead of three, within the 200 foot shoreline jurisdiction. Within the 100 foot River Buffer the proposed height is 15 feet. The existing SMP allows a height of 35 feet between 50 feet and 100 feet from the MHW. Between the River Buffer and the 200 foot shoreline boundary the height limit is 45 feet; a decrease in 70 feet from what is currently allowed. **This decrease in 70 feet decreases the height allowed by approximately 7 stories of development (approximately 10 feet per floor). The 7 stories of development could potentially equate to approximately ±100,000 square feet of loss in potential development.**

3. Nonconforming Use & Structure

As stated before the existing use is nonconforming because it is within the current Low Impact Zone that does not allow restaurants. With the adoption of the proposed regulations, the existing structure also becomes non nonconforming because a portion of it is located within the River Buffer. The proposed SMP regulations consider the existing use and structure as a 'Pre-existing Use' and a 'Pre-existing structure'. Section 14.6 of the proposed regulations regulates pre-existing structures and uses

Pre-existing Use (14.6.A)

The existing restaurant use is nonconforming because it is located within the River Buffer. No pre-existing use can be enlarged, intensified, increased or extended to occupy a greater use of the land, structure or combination of the two, than is presently occupied. The pre-existing use cannot be moved or extended in whole or in part to any other portion of the lot or parcel occupied by the use. If the pre-existing use ceases for any reason for a period of more than 24 consecutive months, no new use can go into the building because it is located within the River Buffer. Upon request of the owner, prior to the end of the 24 consecutive months and upon reasonable cause shown, the City Council may grant an extension of unspecified time beyond

the 24 consecutive months. **If the property owner does not find a new tenant after 24 months of vacancy and the City Council does not extend the 24 month period, the property would lose its pre-existing use status in which case no new uses could occupy the property located within the River Buffer.**

Pre-existing Structure (14.6.B)

The existing structure under the proposed regulations may be not enlarged or altered in such a way that increases its degree of nonconformity or increases its impacts to the functions and values of the shoreline environment. Ordinary maintenance and repair of and upgrades to a pre-existing structure are permitted. If the existing structure is destroyed by any accidental means the structure may be reconstructed to its original dimensions and location on the lot. In the event that the property is redeveloped, such redevelopment must be in conformity with the provisions of this SMP. The existing structure cannot be relocated on the existing site. Similar to the pre-existing use regulations, if the pre-existing structure, or structure and premises in combination, is vacated or abandoned for 24 consecutive months, the structure, or structure and premises in combination, shall thereafter be required to be in conformance with the regulations of the SMP. Upon request of the owner, prior to the end of the 24 consecutive months, and upon reasonable cause shown, the City Council may grant an extension of time beyond the 24 consecutive months. The City Council shall consider special circumstances and economic impacting the sale or lease of said structure. **If the property owner does not find a new tenant after 24 months of vacancy and the City Council does not extend the 24 month period, the property would lose its pre-existing structure which case no new use could occupy the portion of the structure located within the River Buffer.**

To reiterate the impacts as described in the Airpro analysis, a secondary impact to property owners, as a result of a structure or a use becoming nonconforming, is the inability to obtain financing for needed improvements. A property that remains vacant due to government regulations becomes unattractive to potential tenants as well as banks that would under normal conditions provide funds to make the needed improvements. **The inability to attract new tenants and obtain financing creates a significant economic loss to the property owners.**

4. Revegetation and Landscape Requirements (9.10 Vegetation Protection and Landscaping)

As part of the proposed regulations, the City of Tukwila has introduced a new set of regulations **requiring** the preservation of existing trees, removal of invasive species and replanting of native vegetation. A property owner would be required to comply with these regulations if development or redevelopment takes place on the property. It has been determined by previous analysis, described above, that the property has limited potential for development or redevelopment and therefore, would not be subject to these requirements. However; **the City of Tukwila has not provided sufficient amount of information through studies or analysis that would conclude that redevelopment of ALL properties would have an impact beyond existing conditions. The city has not justified the need for the proposed regulations, nor has it considered the proportion of redevelopment and the amount of mitigation for that development.**

5. Public Access (11.0 Public Access to the Shoreline)

The City of Tukwila has identified four principles where Public Access is **required** to be provided:

1. Where a development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact.
2. Where a development or use will interfere with an existing public access way, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses.
3. Where a use or development will interfere with a public use of lands or waters subject to the public trust doctrine, the development shall provide public access to mitigate this impact.
4. Where the development is proposed by a public entity or on public lands.
5. Where identified on the Shoreline Public Access Map.

This appears to be in direct conflict with the Shoreline Management Provisions of WAC 173-26-221(4)(c) that states that “**Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development.** This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.” Requiring all property owners to provide public access exceeds the intent of the Shoreline Management Act.

As part of the study to determine public access, the City of Tukwila should take into consideration the historical points of access to the water, and the intensity of future development. A requirement for public access should be in proportion to the impact created by new development.

6. Development Scenario (Exhibit #5)

Exhibit #5 illustrates the extent of the proposed 100 foot buffer.

C. RECOMMENDED REVISIONS

The following recommended SMP revisions are based on the study of the Barnaby Site; some of the recommendations are consistent with the Airpro site, while others would alleviate some of the impacts to the Barnaby site.

1. Shoreline Buffers

1. **The City of Tukwila should provide for a process where a property owner can request that the proposed buffer be reduced by enhancing the remaining buffer and improving the functions and values of the River Buffer.** The City of Auburn has recently received approval of their SMP in which they allow for a buffer reduction in the amount of 35 percent. The reduction is based upon the approval of certain criteria, but the Department of Ecology has reviewed and approved such a reduction process. By allowing a buffer reduction process the City of Tukwila can provide property owners an

incentive to redevelop and enhance the shoreline buffer; which is one of the goals of the SMP.

2. Consistent with the existing King County SMP, **the City of Tukwila should not eliminate the provisions that allow for the reduction of the River Buffer if public access is provided.** Public access, whether it is direct or limited, is not a requirement for all property owners. For those property owners who provide public access, beyond a defined City of Tukwila Public Access Plan, a reduction in buffer should be granted. The amount of buffer reduction should be dependant on the amount of public access being granted.

2. Height Restriction

The proposed height reduction of 70 feet is a drastic and costly revision due to a significant loss of potential use and the loss in land value. For those areas that are not within residences and don't have the potential to block views of the rivers should not have to burden such a drastic height reduction. The City of Tukwila should revisit this issue and provide a reasonable height for those areas that have the potential for taller buildings that would not block views nor decrease the function and value of the river.

3. Nonconforming Use & Structure

Sections 14.6(A)(3) & 14.6(B)(4) should be revised to reflect the following:

It is recommended that the vacancy or abandonment period for pre-existing development be extended to 48 months with the option of City Council extended that timeframe for an additional 12 months, cumulatively giving a property owner the potential of 5 years to fill a tenant and/or structure vacancy. Previous statement in this letter have shown that these regulations will only make the economic condition in Tukwila worse by creating more structures and/or uses that are nonconforming.

4. Revegetation and Landscape Requirements (9.10 Vegetation Protection and Landscaping)

It is recommended that the City of Tukwila revisit this section and provide the connection of requiring a substantial amount of vegetation for any scope or size of redevelopment. The amount of vegetation and landscaping shall be proportional to the amount of development occurring on the property.

5. Public Access (11.0 Public Access to the Shoreline)

The City of Tukwila should complete a Comprehensive Public Access study to determine the need for public access and identify those areas that are deficient in providing public access as intended by the Shoreline Management Act. Map 6 of the proposed SMP identifies trails; however it lacks identified areas for public access. Once identified then those properties identified should require public access. The City of Tukwila should maintain the current provisions of the King County SMP that provides a buffer reduction for those properties providing direct and limited public access. This should be included in Section 11.5 Public Access Incentives.

6. Development Scenario (Exhibit #6)

Utilizing the proposed revisions discussed before, Exhibit #3 illustrates one conceptual site plan for development that occur on this property. A buffer reduction of 35 feet would allow the property owner to continue to use have an economic return on the property while providing better environmental protection that is currently there.

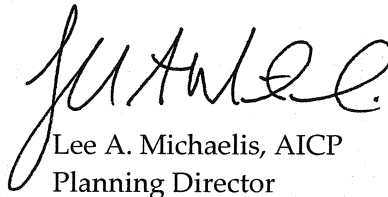
We anticipate that Council members or City Staff will have questions regarding our written findings and or proposed revisions. If you have any questions and/or comments pertaining to these findings, please do not hesitate to call Robert W. Thorpe, AICP, President (rwta@rwta), or Lee A. Michaelis, AICP, Planning Director (lmichaelis@rwta) at 206.624.6239.

Sincerely,

R.W. Thorpe & Associates, Inc.



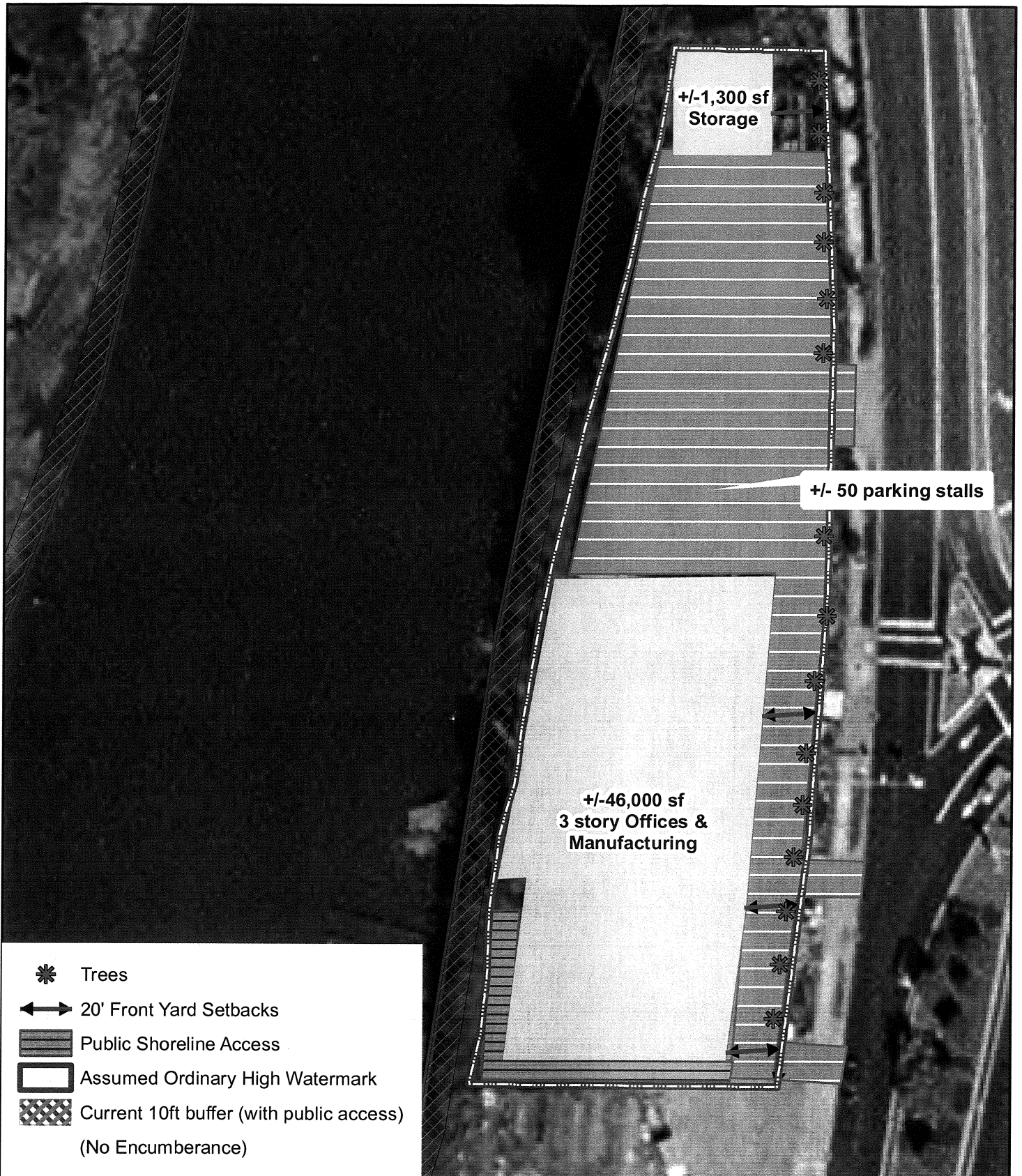
Robert W. Thorpe, AICP
President



Lee A. Michaelis, AICP
Planning Director

Cc: Jacqueline Danieli
Richard Desimone
Cathy Ross
Charles E Maduell, Attorney
Elizabeth Stultz, Property Manager

Enclosures



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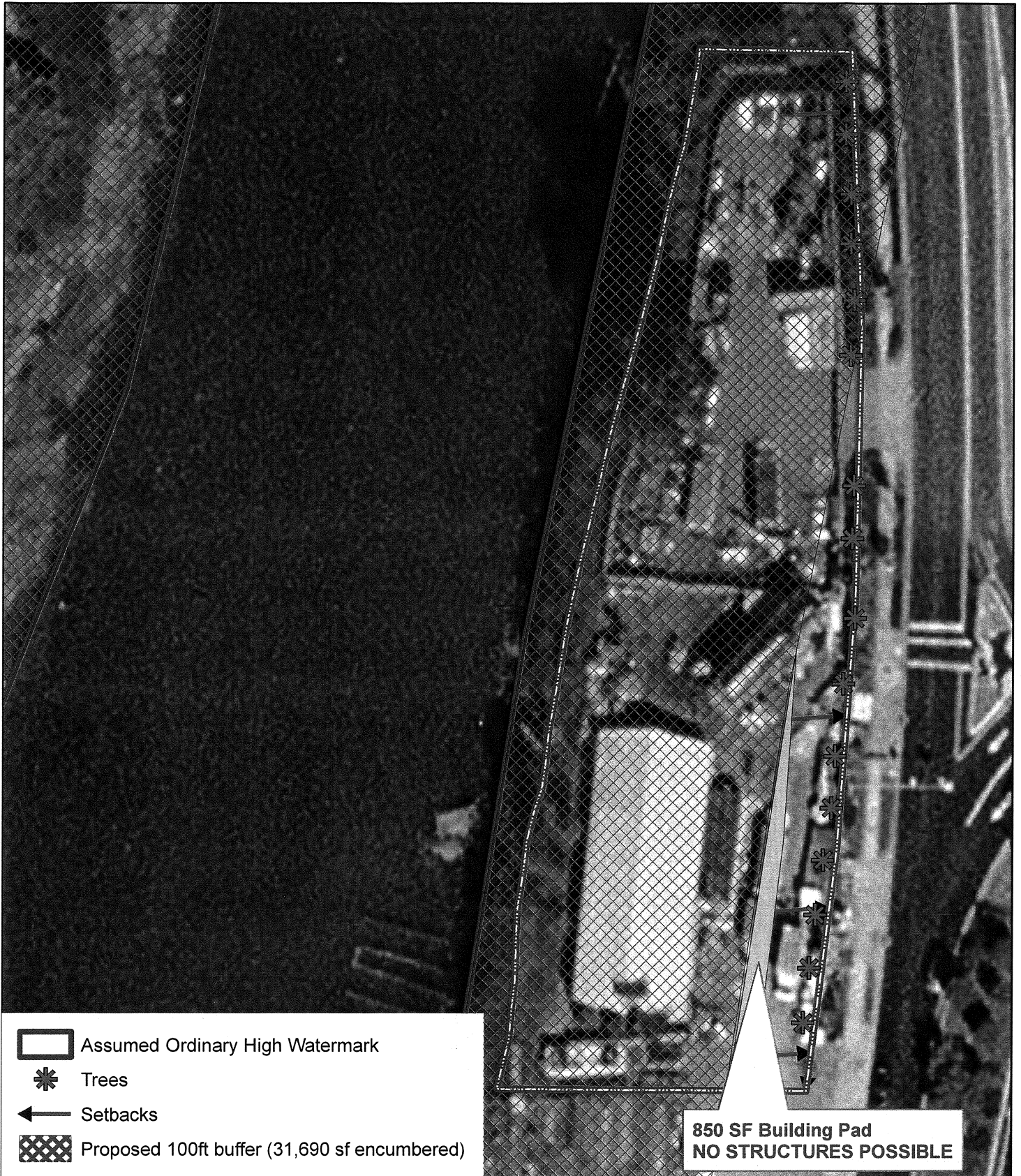
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Project Management
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Economics





Airpro Property
Tukwila

50
Feet



**Existing City of Tukwila
SMP Regulations Exhibit 1**



-  Assumed Ordinary High Watermark
-  Trees
-  Setbacks
-  Proposed 100ft buffer (31,690 sf encumbered)

850 SF Building Pad
NO STRUCTURES POSSIBLE

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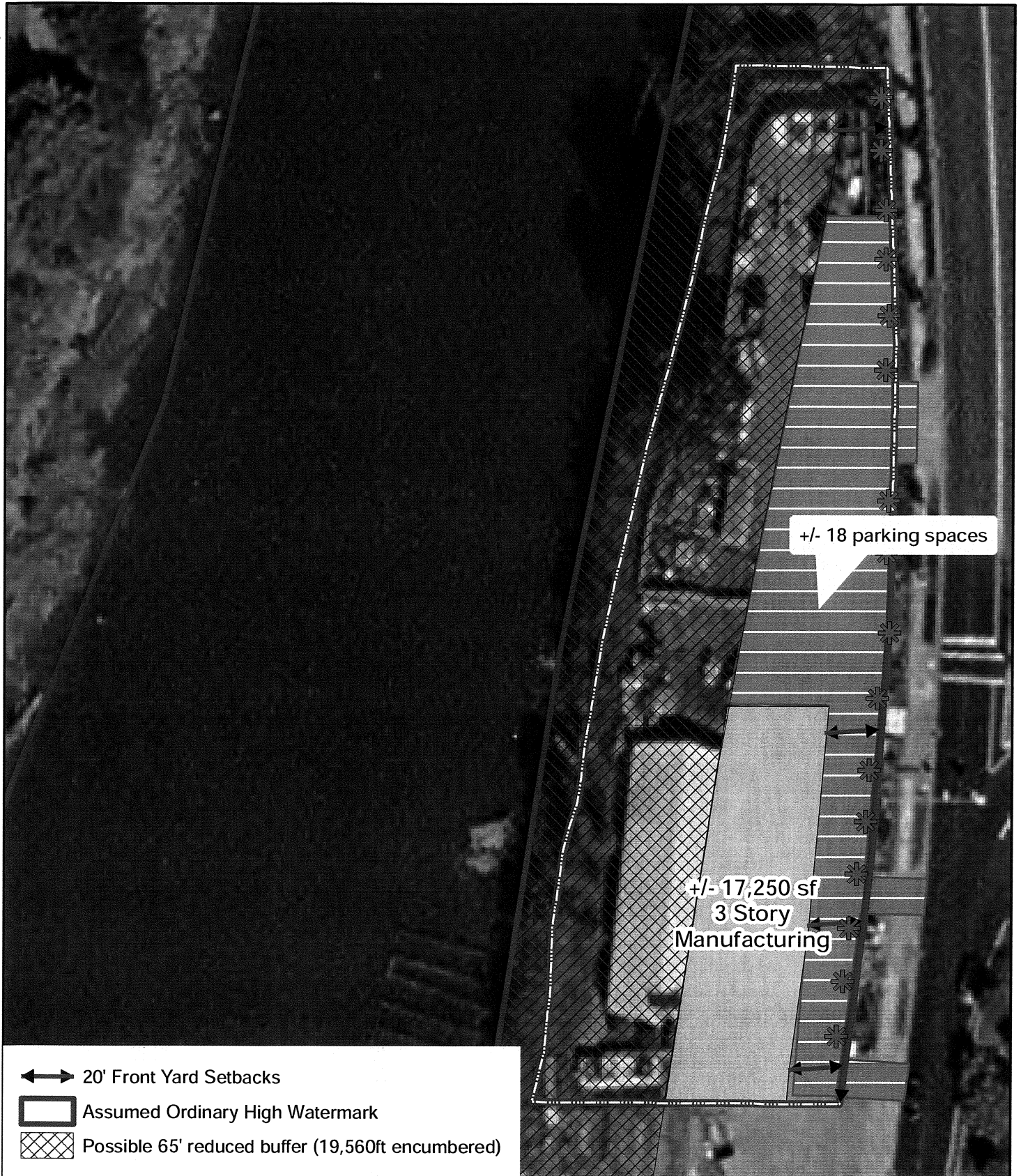
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Tukwila



Tukwila SMP Proposed Buffer
Exhibit 2



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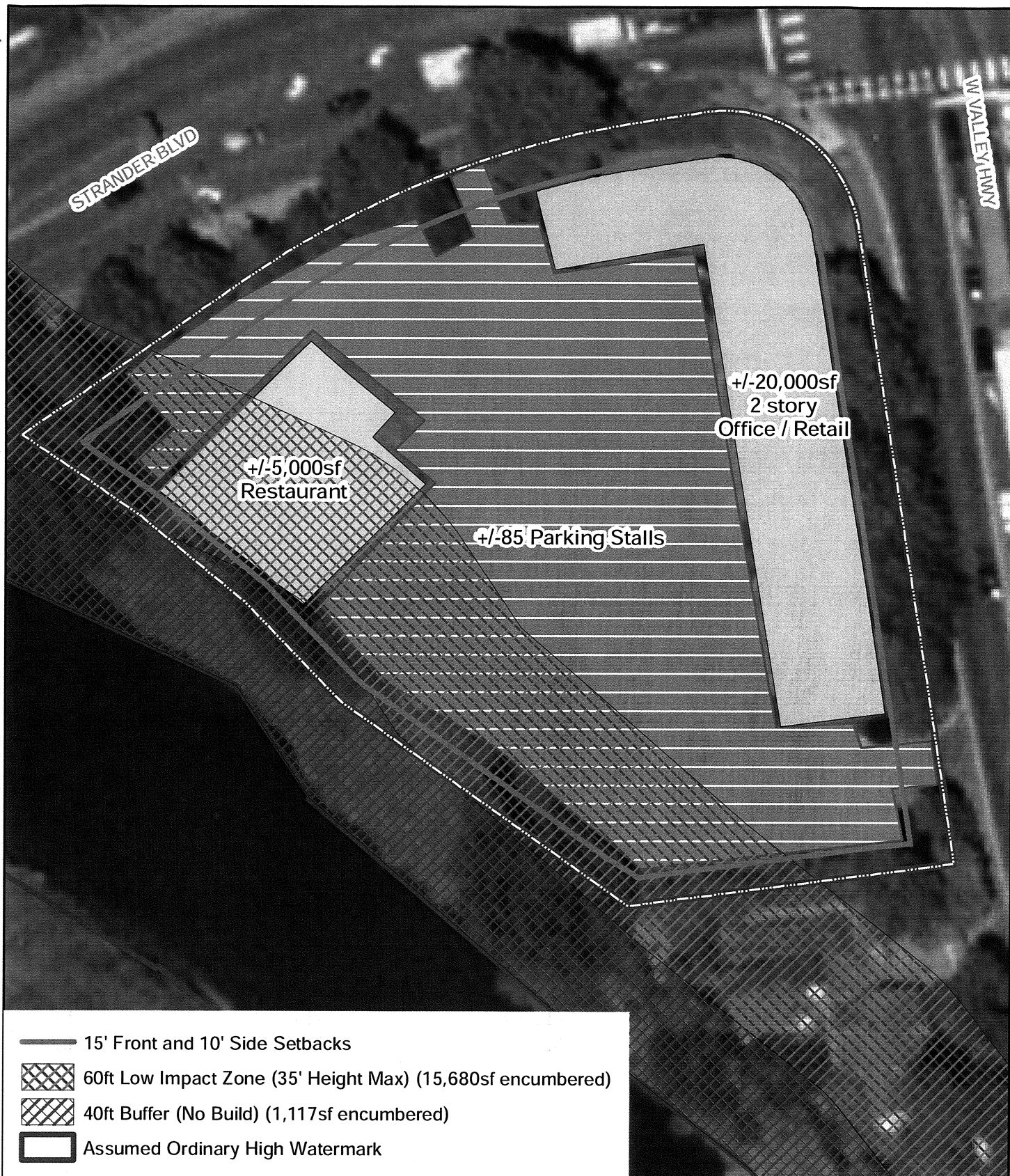
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 Environmental
 Economics

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 Tukwila

50
 [] Feet



Buffer Reduction with Mitigation
 Exhibit 3



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Barnaby's Property

Tukwila

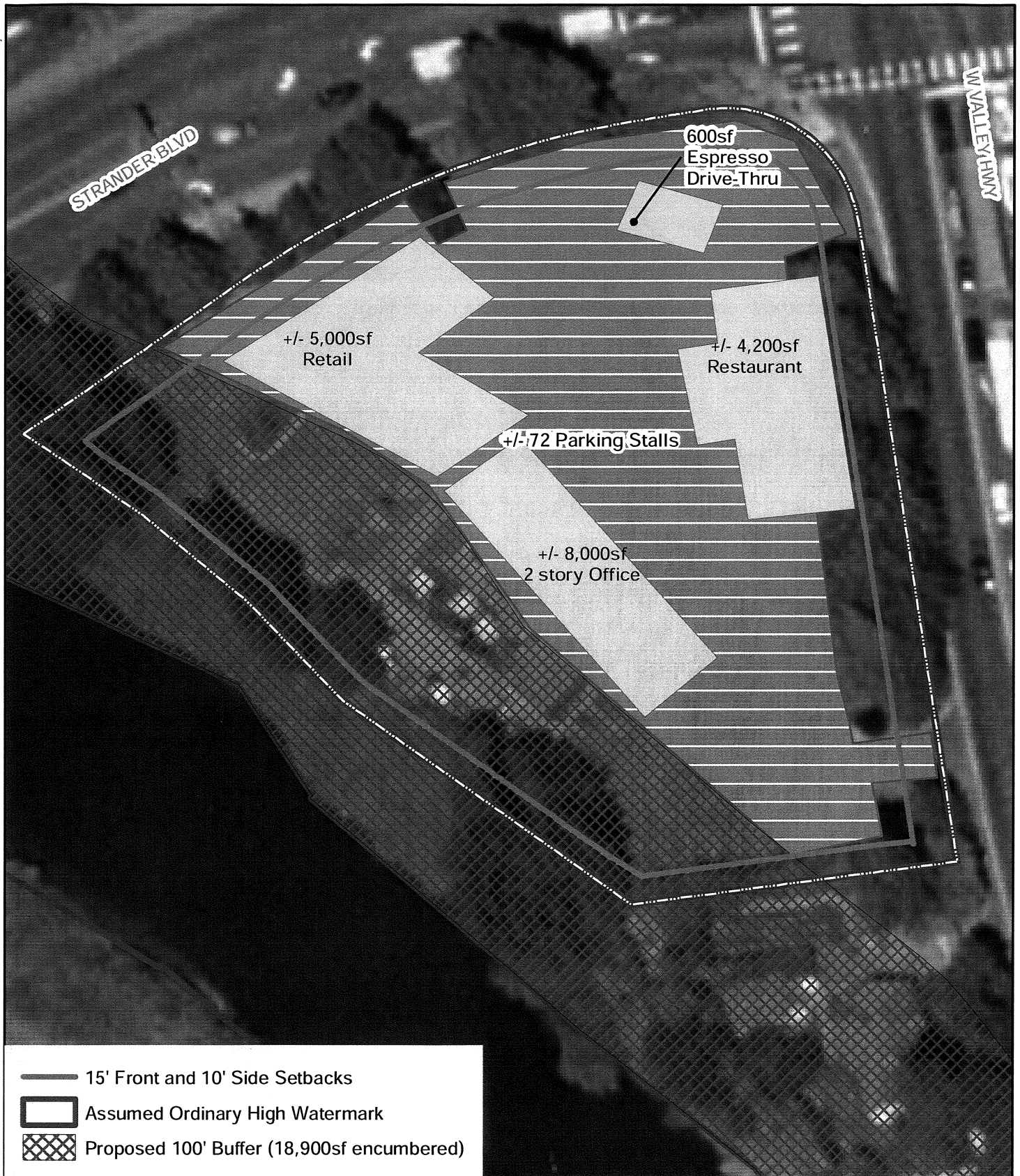
50

Feet



Existing SMP Buffer

Exhibit 4



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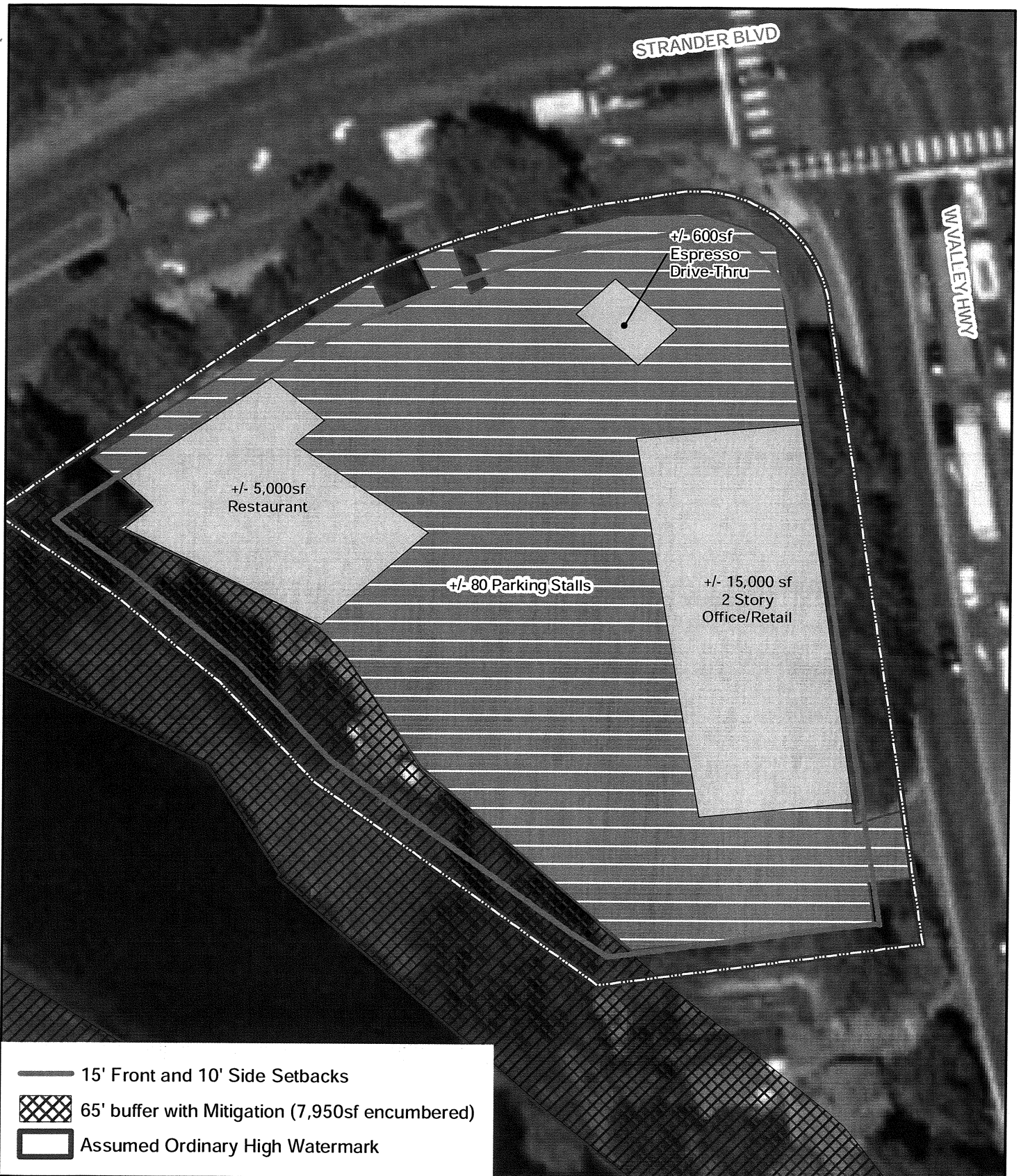
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Economics

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Tukwila

50
Feet



Proposed SMP Buffer
Exhibit 5



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Feet



Buffer Reduction with Mitigation

Exhibit 6

Study Area #	Study Area Name	Existing Buffer (Width) ¹	Existing Buffer (Area) ²	Proposed Buffer (Width) ³	Proposed Buffer (Area) ²	Net Land Loss to Proposed Buffer	Total Lot Area ⁴ in acres	Percentage of Land Lost to Proposed Buffer	Total Appraised Value of Land ⁵	Appraised Value of Land lost to proposed buffer increase.
1	Barnaby's	40'	0.05	125'	0.64	0.59	1.48	40%	\$ 1,031,100.00	\$ 411,046.62
2	Airpro	50'	0.26	100'	0.69	0.43	0.85	51%	\$ 442,800.00	\$ 224,004.71
3	Secret Garden Statuary	50'	0.31	100'	0.8	0.49	1.46	34%	\$ 1,056,700.00	\$ 354,645.89
4	Boeing ~ East Marginal Way	50'	0.00	100'	0.22	0.22	14.21	2%	\$ 7,427,800.00	\$ 114,997.61
5	Boeing	50'	2.55	100'	6.22	3.68	34.55	11%	\$ 18,055,800.00	\$ 1,921,583.57
6	Fremont	50'	1.86	100'	3.13	1.27	12.86	10%	\$ 6,734,800.00	\$ 666,454.88
7	Sabey	50'	1.07	100'	1.89	0.82	32.12	3%	\$ 16,786,900.00	\$ 429,256.70
8	Desimone	50'	0.58	100'	1.12	0.54	4.79	11%	\$ 2,503,600.00	\$ 282,532.18
TOTALS									\$ 54,039,500.00	\$ 4,404,522.15

Footnotes

- 1 Source of Buffer width for Study Area #1 is the City of Tukwila Shoreline Master Program (1982). Source for other sites is the King County Master Program (1982).
- 2 Area calculated using King County iMAP Interactive Web Site
- 3 Source of Proposed Buffers is City of Tukwila Shoreline Master Program Update (2008)
- 4 Area totals provide by King County Assessor Data
- 5 2008 King County Assessor's Land Assessed Value